

REMARKS

Applicant acknowledges receipt of the Examiner's Office Action dated March 3, 2005. All pending claims 16-40 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,335,927, Elliott et al. ("Elliott"), and further in view of U.S. Patent Application Publication No. 2002/0095400 Johnson et al, ("Johnson"). In light of the following remarks, Applicants respectfully request the Examiner's reconsideration and reexamination of all pending claims.

As noted above, all claims stand rejected under 35 U.S.C. § 103 as being unpatentable over Elliott in view of Johnson. The present application has a filing date of April 4, 2000. Johnson is a patent application that published July 18, 2002, based upon an application which was filed June 12, 2001. Both of these dates are subsequent to the April 4, 2000, filing date of the instant application. Johnson was filed as a continuation-in-part of Application Number 09/797,200 filed on March 1, 2001, which claims priority to Provisional Application Number 60/246,401 filed on November 7, 2000 and Provisional Application Number 60/187,211 filed on March 3, 2000. Of all the foregoing dates, only March 3, 2000, predates the filing of the instant application.

The Office Action asserts that Elliott disclose all the limitations of claim 16 except for "providing a registration service where an agent machine can register as a subscriber with extensible service bus and receive a subscriber identification; providing a log on service where the agent machine can connect to the extensible service bus using the subscriber information." The Office Action then apparently asserts that Johnson teaches these missing limitations. The Office Action asserts that Johnson discloses "content delivery bandwidth utilization by individual content supplier or users may be tracked and logged by system management engine

enabling an operator of the content supplier or users may be tracked and logged by system management engine enabling an operator of the content delivery system to charge each content supplier or user on the basis of the content volume delivered” and “non-continuous and/or stored information management of unique/non-unique information anticipated number of simultaneous subscribers and/or simultaneous stream event duration, system resources per subscriber” citing page 10, paragraph 0095 and page 31, paragraph 0261, respectively, of Johnson in support thereof. To paraphrase page 10, paragraph 0095 and page 31, paragraph 0261, Johnson teaches a system that enables an operator of a content deliver system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to define objectives including an anticipated number of simultaneous subscribers or system resources per subscriber. For the sake of arguments, it will be presumed that page 10, paragraph 0095 and page 31, paragraph 0261 teach the limitations of claim 1 missing from Elliott (i.e., a registration service where an agent machine can register as a subscriber with the extensible service bus and receive a subscriber identification; providing a log on service where the agent machine can connect to the extensible service bus using the subscriber identification. However, Johnson can be combined with Elliott to reject claim 16 only if Provisional Patent Application 60/187,211 filed on March 3, 2000, teaches or fairly suggests a system that enables an operator of the content deliver system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to find objectives including anticipated number of simultaneous subscribers or system resources per subscriber.

Provisional Application 60/187,211 is entitled ‘A System and Apparatus for Increasing File Server Bandwidth’ and relates to routing data throughout networks. See Provisional Patent Application 60/187,211, page 1. Provisional Patent Application 60/187,211 describes:

A network appliance made from carrier class communications gear that is optimized for high volume, high speed, autonomous data transport from disk storage to IP networks as well as server-free Gigabit data transport for autonomous file downloading and data streaming, zero overhead throughput bandwidth scalability, data integrity protection and wire-speed payload encryption, source node traffic shaping and load balancing, in addition to dynamic host-spot content bandwidth management is provided

Moreover, the 60/187,211 Application describes a system which does not possess the drawbacks experienced with traditional server forms, and involves employing a content router which can be used to completely offload storage data reads from a host server CPU and I/O subsystem and, subsequently, enable virtually unlimited bandwidth scalability without additional CPU processors. In essence, the content router servers, at least in part, as a unidirectional data transport network appliance that accesses data from a storage device and routes it to a requesting IP address over a network.

Applicant has reviewed the remaining contents of Provisional Patent Application 60/187,211 and can find no teaching or fair suggestion of a system that enables an operator of the content delivery system to charge each content supplier or user on the basis of the content volume delivered and a system with the ability to define objectives including anticipated number of simultaneous subscribers or system resources per subscriber (i.e., the paraphrased teachings of Johnson cited in the Office Action). Accordingly, Johnson should not be afforded the March 3, 2000, filing date of the 60/187,211 Application for the purposes set forth in the Office Action. As such, claim 16 is patentably distinguishable over the cited sections of Elliott and Johnson.

Independent claims 22 - 24 recite limitations similar to the registration service and log on service of independent claim 16. For the reasons set forth above, Applicants believe independent claims 22 - 24 are likewise patentably distinguishable over the cited sections of Elliott and Johnson.

Independent claim 25 stands rejected under 35 U.S.C. § 103 as being unpatentable over Elliott in view of Johnson. Independent claim 25 is substantially different when compared to independent claims 16 and 22 - 24. However, the Office Action has failed to identify specific section of Elliott and Johnson where the limitations of independent claim 25 can be found. Applicants request withdrawal of the rejection of independent claim 25, or in the alternative, Applicant requests specific citations within Elliott and Johnson where the limitations of independent claim 25 can be found.

The remaining claims of the instant application depend directly or indirectly from claims 16 and 22-25. Insofar as these independent claims have been found to be patentably distinguishable or otherwise not specifically treated in the Office Action Response, the remaining dependent claims are likewise patentably distinguishable or not treated in the Office Action Response.

CONCLUSION

In view of the amendments and remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5093.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450, on June 15, 2006.


Attorney for Applicant(s)

6/15/06
Date of Signature

Respectfully submitted,



Eric A. Stephenson
Attorney for Applicant(s)
Reg. No. 38,321
Telephone: (512) 439-5093
Facsimile: (512) 439-5099